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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,636	10/29/2003	Ahmad Akashe	77060	5534

48940 7590 11/09/2006

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 11/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/696,636	AKASHE ET AL.	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 August 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *34-53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *34-53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 34-38, 40, 42-49, and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodnight, Jr. et al (U.S. Patent No. 4091120) taken together with any one of JP 59-213364, Yokoyama et al, and Kudo et al.

Goodnight, Jr. et al discloses a soy protein material made through the preparation of a soybean slurry from soy flour wherein the concentration of soybean is as called for in the claims and wherein the pH of the slurry is adjusted as set forth in the instant claims and the resulting slurry is passed through an ultrafiltration membrane, inherently polymeric, having a cutoff and employing the processing temperature as claimed. The soy protein created therein is inherently deflavored taking into account the similarity in processing between the instant invention and that of Goodnight, Jr. et al (see cols 2-4; examples).

The claims call for the product containing either natural cheese or cream and that same is present in greater amount than the deflavored soy protein in the product. It is notoriously well known to include soy protein in cheese compositions. For example, Kudo et al teaches the addition of a cheese-like food containing soybean protein (which has been deflavored, i.e. free from soybean odor) and natural cheese (see Abstract).

Yokoyama et al teaches a cheese food containing natural cheese and soybean protein wherein it appears that the flavor normally attributed to soybean protein is avoided (see cols. 2 and 3). JP 59-213364 teaches a film food (e.g. cheese slices) containing cream and cheese which is mixed with a smaller amount of soybean protein. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the particular soy protein material asset forth in Goodnight, Jr. et al as a matter of preference within the known soy protein sources, and, more specifically, deflavored soy protein sources. Additionally, for JP 59-213364 which does not specifically setting forth the use of soy protein which has been deflavored and Yokoyama et al which is not clear regarding same, it would have been further obvious to have employed a deflavored version of soybean material, as provided in Goodnight, Jr. et al, so as to avoid the conventionally unwanted taste attributed to same. It should be noted that it appears that there nothing unexpected occurs in adding the soy protein of the instant invention to a cheese or cream product other than providing the advantage of a deflavored aspect which is not considered unexpected in view of Goodnight, Jr. et al in view of the secondary references set forth above.

It is expected that cheeses set forth in the secondary references have the ability to be shredded as called for in instant claim 47.

As for the amount of soy protein and cheese/cream material employed in the composition, determination of same would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further

obvious to have arrived at same as a matter of preference depending on the particular amount of protein desired in the product, the amount of fill needed, etc.

It should be noted that the claims call for a variety of processing conditions such as the ultrafiltration cutoff range during processing. However, it is not seen where any differences between same and the processing of Goodnight, Jr. et al would provide for a patentably distinct product. As such, it is asserted that the product of Goodnight, Jr. et al as modified above would fall within the scope of claims reciting such processing limitations. The claims also call for the particular form of soy protein employed in the cheese (isolate, concentrate, etc.). It is not seen were such mid-processing forms would make for a patentable distinction in the final product which is the subject of the instant claims, and as set forth above, it is asserted that Goodnight, Jr. et al as modified above would fall within the scope of claims regardless of the mid-processing format of protein employed.

3. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodnight, Jr. et al taken together with either one of JP 59-213364 or Yokoyama et al.

JP 59-213364 and Yokoyama et al further teach the use of cream in preparing the soy protein containing cheese product. Said references are applied for the reasons set forth in the rejection above.

4. Claims 41 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodnight, Jr. et al taken together with either one of Yokoyama et al.

Yokoyama et al further teaches the use of mozzarella cheese in preparing the soy protein containing cheese product. Said reference is applied for the reasons set forth in the rejection of paragraph 2 above.

5. Claims 41 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodnight, Jr. et al taken together with either one of JP 59-213364 or Kudo et al and further taken together with Yokoyama et al.

The claims further call for the inclusion of mozzarella cheese as the cheese component used. JP 59-213364 and Kudo et al are silent regarding the use of this particular cheese. However, Yokoyama et al teaches the use of mozzarella cheese in preparing the soy protein containing cheese product. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such cheese as a matter of preference depending on, for example, availability and cost in comparison to other cheeses.

Response to Arguments

6. Applicant's arguments filed 8/31/06 have been fully considered but are not persuasive.

Applicant argues that the soy protein produced in Goodnight, Jr. et al is different than that set forth in the instant claims by using Examples from the instant specification and that of another Goodnight, Jr. et al patent (U.S. Patent No. 4420425). However, this comparison involves the invention of a different patent and includes different processing parameters (ambient temperature for one, 50 C for the other; pH adjustment to 9 for one and 10 for the other; extraction time of 30 minutes for one and 40 for the

other, etc.). Moreover, Goodnight, Jr. et al employed in the rejection above (U.S. Patent No. 4091120) begins with defatted soy flakes rather than defatted soybean flour as used in the comparison pointed to by Applicant. Clearly, too many differences exist between the processes of each of the parties set forth to provide a proper unexpected showing (even if submitted under 37 CFR 1.132) to attribute to the instant invention.

All other arguments have been addressed in view of the significantly modified rejection set forth above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

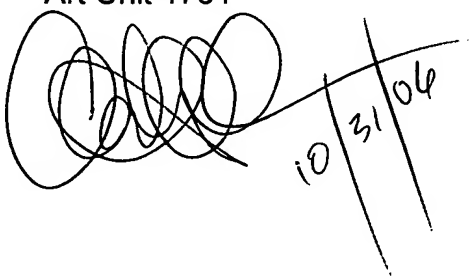
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761



Anthony Weier
October 31, 2006